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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/077,910	02/19/2002	Patrick R. Connelly	BTI-9	3152
37211	7590	08/30/2004	EXAMINER	
BASCH & NICKERSON LLP 1777 PENFIELD ROAD PENFIELD, NY 14526			GETZOW, SCOTT M	
			ART UNIT	PAPER NUMBER
			3762	

DATE MAILED: 08/30/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/077,910	Applicant(s) CONNELLY, PATRICK R.	
	Examiner Scott M. Getzow	Art Unit 3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-4, 6-9, 11-14, 16-19 and 21-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 21-41 is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-9, 11-14 and 16-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

1. Claims 1,2,6,7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsitlik et al (5217010) in view of Dahlberg et al (5814091).

Tsitlik shows all of the subject matter of the above claims (see fig. 17) except for having a layer be diffusion resistant. Dahlberg teaches such a diffusion resistant layer. To make at least one of the layers of Tsitlik diffusion resistant would have been obvious since such has been shown in the art to be beneficial in devices that are implanted in the body.

2. Claims 3,4,8,9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsitlik et al (5217010) and Dahlberg et al (5814091) and further in view of Luo et al.

It would have been obvious to use carbon and/or polymer for the shielding, as shown by Luo, since such has proven effective in reducing interference due to electromagnetic fields.

3. Claims 11,12,16,17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsitlik et al (5217010) and Dahlberg et al (5814091) and further in view of Nappholz et al (5766227).

It would have been obvious to add the asynchronous operability of Nappholz to the device of Tsitlik and Dahlberg since such would further prevent undue interference with the operation of the device, see col. 5, lines 5+ of Nappholz where it is stated that sensing is discontinued in the presence of EMI.

Art Unit: 3762

4. Claims 13,14,18,19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsitlik et al (5217010), Dahlberg et al (5814091), Nappholz et al (5766227), and further in view of Luo et al.

It would have been obvious to use the teachings of Luo for reasons mentioned supra.

Since new rejections have been made, this action is not made final.

Allowable Subject Matter


5. Claims 21-41 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott M. Getzow whose telephone number is (703) 308-2997. The examiner can normally be reached on M-F, 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (703) 308-5181. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3762

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Scott M. Getzow
Primary Examiner
Art Unit 3762

smg